S.B. CIVIL WRIT PETITION NO.515/2005

PADMA

VS

THE ADDL. DISTRICT JUDGE, JALORE & ORS.

DATE OF ORDER : 1.3.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr.Vijay Purohit, for the petitioner

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Heard learned counsel for the petitioner.

The petitioner is aggrieved against the two orders passed by the two courts below dated 24.2.2004 and 27.3.2004 by which the trial court rejected the petitioner's application for grant of temporary injunction and the appellate court dismissed the appeal of the appellant against the order of the trial court.

It appears from the facts of the case that petitioner claimed that a resolution was passed by the Gram Panchayat to allot the land to several persons in which petitioner was also there and the Gram Panchayat decided to issue 'Pattas' to those allottees. According to

petitioner, the respondents forcibly entered into the property in dispute, which belongs to the petitioner by virtue of the resolution dated 10.10.83. According to learned counsel for the petitioner since there is a resolution in favour of the petitioner and the respondents are the trespasser over the land in dispute and petitioner sought relief of declaration, possession and injunction and, therefore, during the pendency of the suit the respondents cannot alter the property in dispute. The two courts below committed serious error of law in giving undue importance to the fact of submitting FR by the police on the FIR lodged by the petitioner. It is submitted that the respondents have no right, title or interest in the property and they are not claiming their title also.

I considered the submissions of learned counsel for the petitioner. It appears from the facts mentioned in the orders of the two courts below that the resolution of the Gram Panchayat was considered by both the courts below and prima facie found that by resolution no connection can be tressed out with the plot in dispute as there is no mention of plot number against any of the allottees whose names are in resolution dated 10.10.83. It appears from the facts and is not in dispute that the resolution was taken in the year 1983, but according to petitioner himself that he has no Patta in his possession. The courts

below found that there appears to be no prima facie case in favour of the petitioner and the courts below also considered the Commissioner's report before rejecting the petitioner's application and appeal by the impugned orders.

In view of the above facts, this court is not inclined to re-appreciate all factual aspects for which the two courts below have applied their mind.

The apprehension of petitioner is that the prima facie finding recorded by the two courts below may also come in the way of the petitioner even in final decision of the suit. The apprehension is having no basis as any finding recorded even by this court in such matters cannot be considered a final finding recorded by the court effecting the ultimate decision of the suit.

In view of the above, I do not find any merit in this writ petition and the same is hereby dismissed.

(PRAKASH TATIA), J.

c.p.goyal/-